(1) (3)

C.T. 100/-

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 2569 /2005

PETITIONER :- Smt. Shyam Bai W/o Ramdayal, Aged about 40 years, Caste Satnami, R/o village – Madhubankhurd, gram Panchayat Pipar Bhauna, Tah. Bilaigarh, District Raipur [C.G.].

VERSUS

RESPONDENTS :-

1] Janiram S/o Teejram, Caste Satnami, R/o village – Madhubankhurd, gram Panchayat Pipar Bhauna, Tah. Bilaigarh, District Raipur [C.G.].

2] Ram Kumar S/o Awadhram, R/o gram Panchayat Pipar Bhauna, Tah. Bilaigarh, District Raipur [C.G.].

3] The Returning Officer, Harish Chandra Dahariya, Nayab Tahsildar, Bilaigarh, Tah. Bilaigarh, District Raipur [C.G.].

4] S.D.O., Bilaigarh, Tahsil Bilaigarh, District Raipur [C.G]

P.R. No. 2570/05 Presented by Shri Ravish Verma dated 14/6/05

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(90)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... WP 256965 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	7.9.2005 Shri Ravish Verma & Shri F.S. Khare, Advocates for the petitioner. Shri Awadh Triapthi, Advocate for counsel for respondent No.1. None on behalf of respondent Nos.2 & 3. Shri Parag Kotecha, Panel Lawyer for respondent No.4. The petitioner by the instant petition has questioned the legality, propriety and correctness of order dated 4.5.2005 passed by learned Specified Officer (S.D.O., Bilaigarh) in Panchayat Election Petition No.3/A-89 (21) of 2005 filed by respondent No.1 whereby the Specified Officer allowed the election petition and ordered for recount of the votes. Brief facts necessary for the disposal of this writ petition are that the petitioner herein along with respondent Nos.1 & 2 contested the election for the post of Sarpanch, Gram Panchayat Pipar Bhauna, Tehsil Bilaigarh, District Raipur, which was held on 15.1.2005. In that election the petitioner herein obtained 271 votes, whereas respondent No.1 obatained 270 votes, therefore, the petitioner was declared as elected Sarpanch and a certificate was issued in favour of the petitioner. However dissatisfied with the result, respondent No.1 herein filed an election petition under Section 122 of the C.G. Panchayat Raj Adhiniyam, 1993 and notices of the same were issued of which the petitioner herein filed reply to the election petition.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक (पूर्वानुबद्ध)

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points on which the parties were at variance on the grounds mentioned in Section 122 of the C.G. Panchayat Raj Adhiniyam, 1993. As such, before passing the order for recount the Specified Officer was required to satisfy himself in accordance with the Rule 5 of the Rules, 1995 that whether the election petition (a) contains a concise statement of all material facts on which the petitioner relies and (b) setforth with sufficient particulars, the grounds on which the election is called in question, and also to satisfy himself based on the evidence of the parties after conducting the trial that the petitioner has been able to make out a case for recount on the basis of pleadings and evidence.

In view of above legal position, if we look into the impugned order dated 4.5.2005, perusal of order reveals that the Specified Officer passed the following order;

> "Perused the matter. Considered the facts and following judgment is passed (1) the petition is in accordance with the legal provisions, therefore, preliminary objection is rejected. (2) the case of this Court bearing No.54/B-121/04-05 be tagged with this case which will be treated as part of this case and there is no need of any other evidence and therefore, decision taken for recount."

If we look into the above order, the order is patently illegal and contrary to the Rules as the same has been passed without recording the evidence, without framing the issues and without hearing the

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

parties, therefore, same is liable to be set aside. Accordingly, the petition is allowed, order impugned being perverse and contrary to the Rules is hereby quashed and learned Specified Officer (Sub Divisional Officer,Bilaigarh) is directed to conduct the proceedings in accordance with the Rules 11 & 12 of the Rules, 1995 and pass the final order after hearing the parties in the matter. Learned Specified Officer to decide the election petition as early as possible preferably within a period of three months.

With the direction aforesaid, the petition stands disposed of.

Consequently, M.(W)P. Nos.2098/05 & 2482/05 also stand disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge